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08 FEB 2007

In re Application of	:	DECISION ON
JUNG et al	:	
PCT No.: PCT/EP03/02662	:	
Application No.: 10/508,921	:	
Int. Filing Date: 14 March 2003	:	PETITION UNDER
Priority Date: 25 March 2002	:	
Attorney's Docket No.: 046516-0101	:	
For: SOLDERED REFRIGERANT CONDENSER	:	37 CFR 1.47(a)

This is in response to the "RENEWED PETITION UNDER 37 C.R.F. § 1.47(a)" filed on 06 October 2006.

BACKGROUND

In a decision from this Office on 06 April 2006, the petition was dismissed. The decision stated that petitioner had not provided sufficient support to establish Alain MAURER's refusal to join in the patent application because no evidentiary documents were submitted to show that a *bona fide* attempt was made to deliver the complete application to him and that he refused to sign the required papers.

On 06 October 2006, petitioner filed the present renewed petition accompanied with an executed Declaration and a declaration by Fahrija Pilavdzic.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

Furthermore, section 409.03(d) of the Manual of Patent Examining Procedure (M.P.E.P.) **Proof of Unavailability or Refusal**, the relevant sections states, in part:

INVENTOR CANNOT BE REACHED:

Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under **37 CFR 1.47**, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made.

The fact that a nonsigning inventor is on vacation or out of town and is therefore temporarily unavailable to sign the declaration is not an acceptable reason for filing under **37 CFR 1.47**.

Furthermore, the fact that an inventor is hospitalized and/or is not conscious is not an acceptable reason for filing under **37 CFR 1.47**. **37 CFR 1.43** may be available under these circumstances. See **MPEP § 409.02**. Such a petition under **37 CFR 1.47** will be dismissed as inappropriate.

The statement of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as internet searches, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached should be made part of the statement. The steps taken to locate the whereabouts of the nonsigning inventor should be included statement of facts. It is important that the statement contain facts as opposed to conclusions.

Petitioner has satisfied items (1), (3) and (4) of 37 CFR 1.47(a). However, the renewed petition still does not satisfy item (2).

Pilavdzic's declaration shows that petitioner made an attempt to obtain Alan MAURER's signature because the evidence provided refers to a copy of the application papers, Soldered Refrigerant Condenser, Declaration and Assignment being sent to Mr. Maurer's last known address for his review and signature.

However, it is unclear if Mr. Maurer still resides in that address because in Exhibit 1 provided with the renewed petition, the return postage card is translated and it states that "does not live at the indicated address." If Mr. Maurer does not reside at the place the papers were mailed to, then petitioner is under an obligation to try to find or reach Mr. Maurer. Where there is an inability to find or reach a joint inventor "after diligent effort," petitioner may file a statement of facts that fully describes the exact facts which are relied on to establish that a diligent effort was made under **37 CFR 1.47**.

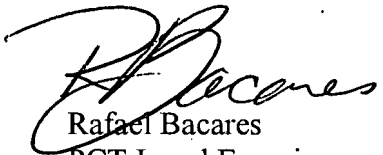
Therefore, the petition has not met the requirements under 37 CFR 1.47(a).

CONCLUSION

The petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration of the merits of the petition under 37 CFR 1.47(a) is desired, applicant must file a request for reconsideration within **TWO (2) MONTHS** from the mail date of this Decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." Extensions of time are available under 37 CFR 1.136(a). Failure to timely file the proper response will result in ABANDONMENT.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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